

**NOTICE OF REQUEST FOR WAIVER OF THE COMMISSIONER OF SECURITIES RULE,  
CHAPTER 590-4-3-.13, ESCROW AND IMPOUNDMENT OF PROCEEDS**

**NOTICE OF PUBLIC HEARING**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to O.C.G.A. § 50-13-9.1, the Georgia Securities Commission shall consider a waiver request from Finger Lakes Region Rural Broadband Company, Inc., Mid-Hudson Region Rural Broadband Company, Inc., Southern Tier Region Rural Broadband Company, Inc., and Western Gateway Region Rural Broadband Company, Inc. (collectively "Petitioners") for Georgia Commissioner of Securities Rule 590-4-3-.13, *Escrow and Impoundment of Proceeds* (hereinafter "Rule").

Petitioners requests a waiver from the Rule requiring the escrow of proceeds when, "securities are to be registered for sale pursuant to Section 10-5-23 of the [Georgia Uniform Securities Act of 2008], and the issuer of such securities has not had any substantial gross revenues from the sale of products or services or any substantial net income from any source for any fiscal year ended during the past three years and has not succeeded, and does not intend to succeed, to any business that has had any substantial net income from any source, for any fiscal year ended during the past three years..."

This notice with an exact copy of the waiver request is being distributed to all persons who have requested in writing that they be placed on the distribution list. A copy of this notice and an exact copy of the waiver request may be viewed during normal the business hours of 8:00 AM to 5:30 PM, Monday through Friday, except for official state holidays, at the Office of the Secretary of State, Securities Division, 2 Martin Luther King Drive, SE, Suite 313 West Tower, Atlanta, Georgia 30334. These documents will also be available for review on the Georgia Securities Commission webpage at [http://sos.ga.gov/index.php/securities/ga\\_waiver\\_request](http://sos.ga.gov/index.php/securities/ga_waiver_request). Copies may also be requested by contacting the Securities Division of the Office of Secretary of State at (404)-232-1505.

Written public comments are welcome. Written Comments must be received on or before, July 20, 2016, and must be addressed to Charlie Jarrett by mail at 2 Martin Luther King Drive SE, Suite 313 West Tower, Atlanta, Georgia 30334 or by EMAIL at [cjarrett@sos.ga.gov](mailto:cjarrett@sos.ga.gov).

The Commissioner of Securities will consider the waiver request at a meeting scheduled to begin at 10:00 AM on Thursday, July 21, 2016. Members of the public are welcome to participate in the meeting by appearing in person at 2 Martin Luther King Jr. Drive, Room 313 – West Tower, Atlanta, GA 30334.

This notice is given in accordance with O.C.G.A. § 50-13-9.1.

This 6<sup>th</sup> day of July, 2016.

  
C. Ryan Germany  
Assistant Commissioner of Securities

BEFORE THE  
STATE OF GEORGIA  
SECRETARY OF STATE AS  
COMMISSIONER OF THE SECURITIES DIVISION

In Re:	)
	)
Finger Lakes Region	)
Rural Broadband Company, Inc.,	)
	)
Mid-Hudson Region Rural	)
Broadband Company, Inc.,	)
	)
Southern Tier Region Rural	)
Broadband Company, Inc.,	)
	)
Western Gateway Region	)
Rural Broadband Company, Inc.,	)
	)
Petitioners.	)

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**VERIFIED PETITION OF THE PETITIONERS**  
**FOR A REVIEW OF THE DENIAL OF THE**  
**APPLICATION OF THE PETITIONERS TO**  
**APPOINT MARTIN E. WASHOFSKY, E.A.,**  
**AS ESCROW AGENT, FOR A WAIVER OF THE ESCROW**  
**AGENT REQUIREMENT, AND FOR A REVIEW**  
**OF THE FAILURE TO ACT OF**  
**THE JOBS ACT - REGULATION A - TIER 1**  
**APPLICATIONS OF THE PETITIONERS**

DISTRICT OF COLUMBIA

ANTHONY RAMOS, being duly sworn, hereby deposes and says:

**I.**

**JURISDICTION**

The Commissioner has original jurisdiction over these agency proceedings,<sup>1</sup> pursuant to Ga. Comp. R. & Regs. r. 590-4-3-.13. (5), O.C.G.A. §10-5-70 *et. seq.*, O.C.G.A. §50-13-9.1 (c) & (d), and Ga. Comp. R. & Regs. r. 616-1-2-.03.

In particular, with respect to securities registrations, pursuant to Ga. Comp. R. & Regs. r. 590-4-3-.13. (5), the "The requirements of this Rule may be superseded or modified in writing by the Commissioner if he or she determines that such requirements are not necessary to protect investors with respect to a particular issue of securities."

In general, with respect to waivers of rules of regulation by particular agencies, O.C.G.A. §50-13-9.1 (c) & (d) (e), (f) and (h)(7), the petitioners must seek relief from the Commissioner. The Commissioner has fifteen days to grant or deny the petition.

In the event of an adverse decision by the Commission, the petitioners may seek administrative review.

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<sup>1</sup> As this matter is not before the judiciary, but rather before the Executive Branch of government, the petitioners may be represented by the representative, and prospective Issuer's representative for the applicants, who is also the company president of the applicant companies, Mr. Ramos.

To the extent that subsection O.C.G.A. §50-13-9.1 (h) (7) may determine jurisdiction, the petitioners states, as they have done prior to the filing of this petition, that they are amenable to an Order by the Commissioner providing for their escrow agent candidate, Martin E. Washofsky, E.A. (hereinafter, Washofsky), to act as escrow agent in a manner that is consistent with Ga. Comp. R. & Regs. r. 590-4-3-.13. As a result, none of the issues as shown in subsection (h) (7) apply here.

In the event of an adverse ruling by the Commissioner on any requests for relief herein, Petitioners request a referral to the Office of Administrative Hearings, pursuant to Ga. Comp. R. & Regs. r. 616-1-2-.03.

## II.

### STATEMENT OF THE CASE

#### AND OF THE FACTS

##### A.

#### INTRODUCTION

Commission staff have strung together five deficiency letters, each connecting the 30-day Rule, with over 150 alleged deficiencies, in an abuse of discretion that has denied the qualification of the four applications of the petitioners.

Aside from the 30-day rule for deficiency letters, the absence of any identifiable standards or rule governing the qualification of JOBS Act - Regulation A - Tier 1 applications has resulted in a

vague review process by Commission staff, culminating in an application time period that now exceeds that made by the Securities and Exchange Commission. Such a vague process has resulted in an abuse of discretion by Commission staff, in that such open-ended processes are causing a significant hardship on the ability of the applicants to proceed with raising of capital, which is the goal as contained within the letter and the spirit of JOBS Act legislation for new companies, like the applicants.

Further, Commission staff have made impossible the ability of the applicants to employ an escrow agent, and have, in fact, intentionally rejected the only escrow agent which will act as such for the applicant companies. The actions of Commission staff are an abuse of discretion concerning the escrow rules, especially where the applicant companies have never objected to the escrow agent requirement.

**A.**

**JOBS ACT REGULATION A - TIER 1 SECURITIES AND  
EXCHANGE COMMISSION APPLICATIONS**

The petitioners, (hereinafter, the applicants) are:

- a ) Finger Lakes Region Rural Broadband Company, Inc.;
- b ) Mid-Hudson Region Rural Broadband Company, Inc.;
- c ) Southern Tier Region Rural Broadband Company, Inc., and;
- d ) Western Gateway Region Rural Broadband Company, Inc.

Upon the effective date of the JOBS Act - Regulation A - Tier 1 (hereinafter, Tier 1) regulations, the petitioners made application<sup>2</sup> to the Securities and Exchange Commission (hereinafter, the SEC) for same. All four applications were processed simultaneously, and, because the program was new, and also because the interconnector sector for rural broadband in the United States appeared to be new to the securities industry, the applications received particular scrutiny. After the initial filing of the applications and supporting documentations, and after several follow up requests for further documents, all four applications received a 'non-public' notice to proceed to qualification. This first notice was in October, 2015.

With the program being new, there arose a second level of review, which was made in October, 2015, and involved further scrutiny of all applications. In December, 2015, all four applications were again given the go-ahead to proceed to final qualification. Final SEC qualification consisted, and consists of:

- a ) providing an 'attorney letter' to the SEC;
- b ) achieving a Blue Sky qualification from at least one State, and;
- c ) providing a 48-hour request for qualification letter to the SEC, upon the accomplishment of a) and b), just above.

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<sup>2</sup> The president of the four companies, and therefore, the signer of the applications as the proposed Issuer's representative, is Mr. Ramos (hereinafter, Ramos)

**B.**

**THE GEORGIA APPLICATIONS**

The applications before the Commission commenced in October 27, 2015. On November 2, 2015, the Commission provided its first deficiency letter to the applicants. The Commission's letter requested further information, and informed the applicants that a response was due in thirty days.<sup>3</sup> On November 3, 2015, the applicants made their reply to the Commission's request of November 2, 2015.

In what is, in the opinion of the applicants, an additional level of protection for the investor, the offering documents of the applicants include a 'rescission,' or 'right of withdrawal' period of three days. Such exceeds current Georgia law concerning rescission of contracts, as Georgia specifically excludes securities contracts from its rescission law.<sup>4</sup>

On December 1, 2015, the Commission made its second deficiency letter to the applicants. On December 17, 2015, the applicants made their reply to the deficiency letter of December 1, 2015.

On January 28, 2016, the Commission made its third deficiency letter to the applicants. On the same day, the applicants made their reply to the deficiency letter of January 28, 2016.

<sup>3</sup> Ga. Comp. R. & Regs. r. 590-4-3-.02 (3).

<sup>4</sup> See, Georgia Department of Law, Consumer Protection Unit:  
<http://consumer.georgia.gov/consumer-topics/canceling-a-contract>

On February 5, 2016, the Commission provided its fourth deficiency letter to the applicants.

On the next day, February 6, 2016, the Applicants made their reply to the deficiency letter of February 5, 2016.

On February 26, 2016, Ramos contacted Commission counsel, Charles Jarrett (hereinafter, Jarrett), to make inquiry as to when the applications would be approved. Jarrett made no reply.

On March 11, 2016, Ramos again contacted Jarrett, again making inquiry as to when the applications would be qualified. On March 17, 2016, Jarrett retaliated with a fifth deficiency letter, requesting a record one hundred-twenty five items for either correction or document production.

Ramos sought out Jarrett for a telephone conference. The telephone conference was had with Commission staff on March 21, 2016.<sup>5</sup> Ramos indicated to Commission staff that he was concerned with such a large and new demand, and specifically requested a time frame as to whether the review process would be completed. Both Jarrett and another Commission staffer were non-committal. Ramos attempted to review the items on the list, and at that point, the Commission staffer indicated that she 'had another meeting to go to and did not have the time to

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<sup>5</sup> Throughout all of the phone conferences with Jarrett, he has consistently made the same reply: "I can't tell you when the applications will be qualified," or "I can't give you a time frame when the applications will be qualified."



sit here and review the items.' Jarrett, then, returned to his office, and he and Ramos continued the phone conference. Jarrett was equally vague about the process. On March 30, 2016, the Applicants made their reply to the deficiency letter of March 17, 2016.

For all of April, all of May, all of June, and to the present, now more than ninety days, Commission staff has made no qualification of the applicants, and has not presented any further deficiency letters.

There are, literally, no further documents that could be provided by the applicants, and, short of delving into the realm of the hypothetical, simply no more comments or explanations that could be provided in the applications.

All told, eight months and more than 150 alleged deficiency items, times 4, for each company, have now elapsed since the first application documents before the Commission, vs. less than six months before the SEC.

C.

THE ESCROW REQUIREMENTS OF

Ga. Comp. R. & Regs. r. 590-4-3-.13 et. seq

At one point in the process of the replies to the deficiency letters, Jarrett contacted Ramos to say that the Commission was invoking the escrow requirements of Ga. Comp. R. & Regs. r. 590-4-3-.13 et. seq. Ramos made no objection to the requirement, and informed Jarrett that the

boards of the applicant companies, in fact, thought that the escrow requirement would be mutually beneficial to the investor and to the applicants. The requirement provides a location for the investor to place the funds during the three-day withdrawal period. At the same time, the requirement provides the applicant companies with protection, should an investor wish to withdraw the contract, and seek a return of those funds.

In the case of such a recession during the three-day period, all of the funds, except for the fees and costs of the administration of the funds by the escrow agent, would be returned to the investor, never having arrived at the bank of the applicant companies. The applicant companies would, similarly, not issue shares, thus keeping their records accurate as to sales.<sup>6</sup>

In the case of the Rule, the disbursements would be governed by same, and, therefore, with or without the Rule, the applicants believe that, as the companies are new, this is a good business practice.

To this end, Ramos began attempts at compliance with the Rule. He met with the bankers at BB&T, where the applicants bank. Bank personnel escalated the request to the trust department. After a time, the bank personnel informed Ramos that, because of stringent new banking rules in place since the 2008 banking collapse, inasmuch as the applicant companies were making JOBS Act applications, the companies, for banking purposes, would be classified as 'financial services'

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<sup>6</sup> The offering documents provide that the investor, may, however, make a waiver of the three-day right of withdrawal. The applicants have provided this form in their documents, and Commission staff have not objected to this.

companies. Ramos was advised, point blank, that, in this regard, the bank would not, under any circumstances, become an escrow agent under the Georgia Rules.

Ramos, then, contacted his personal banker at Wells Fargo, where, through its various permutations and mergers, Ramos has been a customer for 22 years. Wells Fargo, similarly, rejected the escrow rules, for the same reason as had BB&T.

Ramos contacted Wilmington Trust Company, and never received a reply.

Ramos contacted a company which is involved in JOBS Act transactions for portal companies, Fund America. That company rejected Ramos' request, although Ramos did have some concerns as to whether Fund America could act as such.

Ramos contacted BDO, LLP, the CPA firm with which the applicant companies anticipate handling their business in the future.<sup>7</sup> BDO rejected the request.

Ramos contacted a private CPA company, which rejected the request.

Ramos, then, thought to contact a businessman, Martin E. Washofsky, E.A., who is a former IRS revenue agent. Mr. Washofsky is known to Ramos. Mr. Washofsky, is a Marine Corps veteran,

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<sup>7</sup> Among the large CPA firms, because the companies are new, only BDO has met with, and expressed an interest in the future accounting business of the applicant companies.

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and, upon retiring from the IRS, continued his auditing specialty by becoming an IRS Enrolled Agent, representing tax defendants before the IRS.

Ramos informed Jarrett that all of the attempts that he had made, save for Mr. Washofsky, resulted in rejection. Ramos and Jarrett met by phone concerning this obstacle. Ramos asked Jarrett if, in any public record, he could point Ramos to any companies or individuals who had been approved by the Commissioner to act as escrow agent? Jarrett informed Ramos that he did not know of any such persons or companies.

Ramos had disclosed to Jarrett that Mr. Washofsky was one of the company pioneers and held shares. Jarrett replied that 'since Washofsky is an insider' he could not act as escrow agent. Ramos then advised Jarrett that Mr. Washofsky would be willing to divest his shares, if that would result in the appointment of him as the escrow agent. Ramos, by this time, was repeatedly informing Jarrett that he was having no success in even getting any persons on the phone to talk about the escrow issue, in terms of any further banks or trust companies.

After a time, Jarrett finally called Ramos. Jarrett informed Ramos that Mr. Washofsky could not be approved because he was not an 'institutional' escrow agent, and that 'since it would be a personal account, he could just take the money at any time.'

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Ramos informed Jarrett that any bank or trust company or any other company could, similarly, with errant employees, 'just take the money at any time.' Jarrett made no reply.

Ramos continued to query Jarrett as to whether he knew of anyone who would be satisfactory to him. Jarrett again replied that he did not.

Ramos informed Jarrett that, under those circumstances, an impossibility of compliance arose. Jarrett also made the comment that the escrow agent should be someone who is not known to the companies. Ramos informed Jarrett that, to the contrary, as the companies are new, it would be much safer to have the escrow agent as someone who is known to at least one of the founders, vs. a total stranger upon whom the companies would have to rely.

Jarrett and Ramos ended the conversation with the knowledge that this petition would be filed, so that the Commissioner may make a ruling, and, in the absence of a positive ruling, an escalation to the Office of State Administrative Hearings .

III.

ISSUES

A.

WHETHER COMMISSION STAFF HAS ABUSED ITS  
DISCRETION IN FAILING TO  
APPROVE THE APPLICATIONS?

B.

WHETHER COMMISSION STAFF  
HAS ABUSED ITS DISCRETION  
BY FAILING TO APPROVE  
MR. WASHOFSKY AS THE ESCROW AGENT?

IV.

ANALYSIS

A.

COMMISSION STAFF HAS  
ABUSED ITS DISCRETION IN  
FAILING TO APPROVE THE APPLICATIONS

O.C.G.A. §10-5-70 *et. seq.*, places in the Commissioner, the full authority to administer the regulation and registration of securities in the State of Georgia.

Ga. Comp. R. & Regs. r. 590-4-3-.02. (3), provides:

When a registration statement is found to be deficient, the Commissioner may send a deficiency letter notifying the Applicant of such deficiencies. The registration statement shall be deemed to be abandoned by the Applicant without further action by the Commissioner if the Applicant fails to amend the registration statement to address such deficiencies within thirty (30) days following the date of such deficiency letter.

Ga. Comp. R. & Regs. r. 590-4-3-.05. *et. seq.*, provides for the contents of the application.

Such a statutory and regulatory scheme provides the structure by which applicants must be governed when making application to the Commission.

The Commissioner has the ultimate authority, but when an application is otherwise complete, the only time frame that is provided in all of the rules governing qualification is the thirty-day rule shown above. In the absence of a deficiency letter, an application may be approved.

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In this matter, there have been five deficiency letters. Commission staff appears to understand that the applications must be qualified or rejected within thirty days after any reply. This proof of this lies in the succession of the five deficiency letters. The letters began in November, 2015. On or about thirty days after that reply, the Commission sent out the second deficiency letter. On or about thirty days after the applicants replied to the second one, Commission staff sent out the third one.

On or about thirty days after the applicants replied to the third deficiency letter, the Commission sent out letter number 4.

And, on or about thirty days later, in retaliation for the continued attempts by the applicants to achieve qualification, Commission staff sent out the fifth deficiency letter, with record-setting 125 alleged deficiencies, apparently, in addition to the deficiencies in the first four.

The Commissioner is reminded that, prior to making application, the applicants had gone through two levels of review by the SEC. The Commissioner is further reminded that the application process before the Commission has now exceeded the total time in which the applications were pending before the SEC.



By the time of the filing of this petition, a record ninety days since the reply to the 125-item deficiency letter have expired, and there appears no end in sight, in the absence of a decision on this petition by the Commissioner.

**B.**

**THE COMMISSION STAFF**  
**HAS ABUSED ITS DISCRETION BY**  
**FAILING TO APPROVE MR. WASHOFSKY**  
**AS THE ESCROW AGENT**

O.C.G.A. §50-13-9.1 provides that a waiver or variance may be granted by an agency in matters where a 'substantial hardship' makes impossible compliance with an agency Rule.

Ga. Comp. R. & Regs. r. 590-4-3-.13. (5) provides "The requirements of this Rule may be superseded or modified in writing by the Commissioner if he or she determines that such requirements are not necessary to protect investors with respect to a particular issue of securities."

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In this matter, the statutory and rules scheme provide for the approval of Mr. Washofsky as the escrow agent. By this verified petition, the applicants prove that:

a ) with JOB Act - Regulation A - Tier 1, as to their companies, there is an impossibility of locating the type of 'institutional' escrow agents that are required by the Rule;

b ) the Commission has no database or other support mechanism by which such escrow agents may be located, and;

c ) the Applicants are not objecting to an escrow agent, but rather requesting the approval of Mr. Washofsky who is the only person willing to take on the escrow agent task, given that the applicant companies are new, and also given that the companies do not qualify for any banks or trust companies to serve as such.

Further, when combined with the three-day right of withdrawal, a consumer benefit that exceeds Georgia law, the investor, clearly, has an advantage.

Finally, Ramos has informed Jarrett that, should Jarrett's concerns that Mr. Washofsky would 'take the money,' continue, the companies would be willing, as an added expense, to retain a CPA to audit Mr. Washofsky's deposits and disbursements on a 30-day basis, and further, to have the CPA report directly to Jarrett.

V.

CONCLUSION

The 30-day rule for deficiency letters is the only known rule which provides for firm guidance among the parties when making application for registration by qualification. Commission staff has been able to abuse this, rule, and therefore, abuse its discretion, where, as here, all five deficiency letters were strung together in an obvious effort to intentionally delay qualification. The Commissioner should reject such an abuse of discretion and qualify the applications.

The applicants have proved that they wish to have an escrow agent, together with a three-day right of withdrawal as a part of their sales contract. The applicants prove here, however, that a substantial hardship, and impossibility, exists with respect to the Commission's invocation of the escrow rule. There simply are no other known companies or persons, other than Mr. Washofsky, who, at the present time, may fill that role. The Commissioner should appoint Mr. Washofsky as the escrow agent.

VI.

REQUEST FOR REFERRAL TO THE OFFICE  
OF STATE ADMINISTRATIVE HEARINGS

Pursuant to Ga. Comp. R. & Regs. r. 616-1-2-.03, in the event of an adverse opinion and Order on either of the two issues, the applicants request a referral to the Office of State Administrative Hearings .

FURTHER AFFIANT SAYETH NOT.

SWORN AND SUBSCRIBED before me this 5th day of July, 2016.

BEFORE ME appeared Anthony Ramos, who is personally known to me, and who being sworn duly stated that the averments in this affidavit are true and correct to the best of his information and belief.

Anthony Ramos

Devon J. Wiskey  
Name of Notary

07/05/2016

Date that document was signed and notarized

Subscribed and sworn before me on (Date)

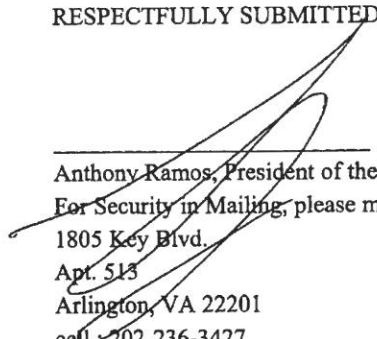
(Notary Signature)

Notary stamp



District of Columbia  
State of \_\_\_\_\_ County of: United States  
Subscribed and sworn before me on: 07/05/16  
(Date)  
(Notary Signature)

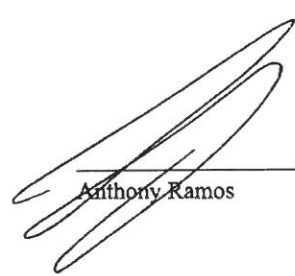
RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
Anthony Ramos, President of the Petitioning Companies  
For Security in Mailing, please mail any notices to:  
1805 Key Blvd.  
Apt. 513  
Arlington, VA 22201  
cell: 202-236-3427

Petitioners request that any notices, decisions and Orders,  
also, be provided by email to: [00aramos@gmail.com](mailto:00aramos@gmail.com).

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 5th day of July, 2016, the original of this document was mailed to: Brian P. Kemp, Secretary of State and Commissioner of the Securities Division 214 State Capitol, Atlanta, Georgia 30334, and that a copy was emailed to: Charles Jarrett, Esquire / Enforcement Attorney / Securities Division / Office of the Georgia Secretary of State / State of Georgia, [cjarrett@sos.ga.gov](mailto:cjarrett@sos.ga.gov), and that a copy was emailed to the Board Members of the Petitioners

  
\_\_\_\_\_  
Anthony Ramos